



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



Jeannette Boss
10 Sunset Dr.
Salem, NH 03079

Re: Wetlands Bureau File #2001-982

**ADMINISTRATIVE ORDER
No. WD 03-18**

December 1, 2003

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Jeannette Boss pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Jeannette Boss is an individual having a mailing address of 10 Sunset Drive, Salem, NH 03079.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:14, III provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
3. Jeanette Boss is the owner of real property located at 10 Sunset Drive in Salem, New Hampshire, more particularly identified on Town of Salem Tax Map 28, as Lot 5708 ("the Property"). The Property has 59 feet of frontage on Arlington Pond.

4. On June 26, 2001, DES personnel inspected the Property and observed the following:
 - a. A boat canopy frame constructed of pipe and covered with blue canvas adjacent to the dock and within 10 feet of an abutting property line;
 - b. A dock measuring 8 ½' x 5' directly adjacent to the boat canopy; and
 - c. A deck measuring 13' x 11' extending from the dock
5. On August 14, 2001, DES issued Letter of Deficiency WET 2001-36 ("LOD") to Jeanette Boss. The LOD requested the following:
 - a. Remove the canopy from the lake within 5 days; and
 - b. Once removal is complete, submit documentation in the form of photos to DES.
6. The LOD was received by Jeanette Boss on or about August 20, 2001, as evidenced by the signed postal receipt.
7. On August 23, 2001, DES received correspondence from Jeanette Boss requesting a meeting to clarify the correspondence received.
8. On September 12, 2001, DES personnel met with Jeanette Boss and her daughter Lauren Boss to discuss the issues related to the LOD. During this meeting, Jeanette Boss indicated that the dock referenced in the LOD had been there since 1977 or 1978 and that the canopy was not there at that time. DES personnel requested Jeanette Boss to submit an after-the-fact-application for a permit to retain the canopy and dock. A signed setback waiver from the abutter and historical and aerial photographs documenting the historical status of the docks was also requested by DES to consider the application complete.
9. On October 24, 2001, DES sent a follow up letter to Jeanette Boss summarizing the meeting of September 12, 2001 and reiterating the items discussed during the September 12, 2001 meeting required to process an application to retain the canopy and dock. The letter specifically noted that the following was required; 1) photographs documenting that the structures on the frontage were grandfathered; 2) a Standard Dredge and Fill Application for the canopy filed through the Town of Salem; 3) a written waiver from the affected abutter waiving their objection to the location of the canopy within the 20' setback to their Property boundary.
10. On November 26, 2001, DES received an after-the-fact application from Jeanette Boss. A setback waiver was not included with the application. The applicant submitted an historical photograph of the Property showing a small wooden rectangular structure on the frontage.
11. By letter dated July 9, 2002, DES issued a denial for the request to retain the seasonal canopy and docking facility citing, among other things, the lack of abutter permission to have a docking facility closer than the 20 foot setback per RSA 482-a:3(XIII)(a).

12. On July 26, 2002, DES received a request for reconsideration of the application decision from Jeanette Boss.

13. On October 1, 2002, DES issued to Jeanette Boss a request for more information which indicated that DES would reconsider Jeanette Boss's request to retain a seasonal canopy if the following was provided:

- a. A signed, notarized waiver of the 20-foot setback pursuant to RSA 482-A:3(XIII)(c) from the abutter who owns Lot 5709 on Tax Map 28;
- b. A plan showing:
 - i. Complete dimensions for all existing and proposed structures on the frontage;
 - ii. Dimensions of all dock supports and support locations;
 - iii. Structures relative to fixed points on the shoreline and distances from the structures to property lines;
 - iv. Twenty foot setback from the imaginary extension of the property lines over the water; and
 - v. A statement that all proposed supports and any part of the structure located over water or the lakebed would be removed for the nonboating season.

14. On October 29, 2002, DES received a letter from Jeanette Boss stating that she had been unable to address and resolve the matter.

15. By letter dated November 4, 2002, DES advised Jeanette Boss that her request to install and maintain a seasonal canopy was not approved and requesting that within 30 days photographic evidence be submitted to DES demonstrating that the canopy and all supports have been removed.

16. On December 2, 2002, DES received a letter and photographs of other docks on the lake from Jeanette Boss.

17. By letter dated January 15, 2003, DES advised Jeanette Boss that DES had not received revised plans, a waiver, or photographs documenting that the seasonal canopy and docking facility were removed. DES further requested that Jeanette Boss immediately remove the seasonal canopy and docking facility from Arlington Pond.

18. On May 14, 2003, DES personnel inspected the Property and found that the canopy, deck, and dock had not been removed.

19. To date, DES has not received any evidence that the canopy, deck, and dock have been removed.

20. To date, DES has not found conclusive evidence that the dock and deck were not in place prior to 1978 and will not pursue removal of the dock and deck at this time.

D. DETERMINATION OF VIOLATIONS

1. Jeanette Boss has violated RSA 482-A:3, I, by installing a canopy without a permit from DES.
2. Jeanette Boss has violated RSA 482-A:3 XIII (a) by installing a canopy within 20 feet of an abutting property line in non-tidal waters without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Jeanette Boss to do the following:

- By December 30, 2003**, completely remove the canopy frame and covering.
- By January 10, 2004**, submit to DES documentation that includes photographs that the canopy frame and covering have been removed. The documentation shall include photographs showing all stages of removal.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Arlene Allen
DES Water Division
6 Hazen Drive
PO Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: aallen@des.state.nh.us

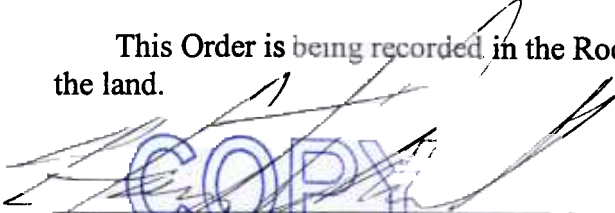
F. APPEAL

Any party aggrieved by this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion. Filing an appeal or motion for reconsideration of the Order will not automatically relieve you of your obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Jeannette Boss remains obligated to comply with all applicable requirements, in particular the removal of structures in Arlington Pond. DES will continue to monitor Jeannette Boss' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.


Harry E. Stewart, P.E., Director
Water Division


for Michael P. Nolin, Commissioner

Certified Mail/RRR: 7000 0600 0023 9933 0051

cc: Gretchen Rule, Administrator, DES Legal Unit
Public Information Officer, DES Public Information Center
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ
Rockingham County Registry of Deeds
Salem Selectmen
Salem Conservation Commission